

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE

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DANIEL LOVELACE and  
HELEN LOVELACE, Individually, and as Parents of  
BRETT LOVELACE, deceased,

Plaintiffs,

VS.

NO.: 2:13-cv-02289 JPM-dkv

JURY TRIAL DEMANDED

PEDIATRIC ANESTHESIOLOGISTS, P.A.;  
BABU RAO PAIDIPALLI; and,  
MARK P. CLEMONS,

Defendants.

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**RESPONSE OF DEFENDANTS, PEDIATRIC ANESTHESIOLOGISTS, P.A.,  
AND BABU RAO PAIDIPALLI, M.D., TO METHODIST HEALTHCARE – MEMPHIS  
HOSPITALS’ MOTION AND MEMORANDUM OF LAW FOR PROTECTIVE ORDER**

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COME NOW defendants, Pediatric Anesthesiologists, P.A. and Babu Rao Paidipalli, M.D., by and through their counsel of record and submit the following Response to Methodist Healthcare – Memphis Hospitals’ Motion and Memorandum of Law For Protective Order, and state as follows:

**PROCEDURAL HISTORY**

On December 6, 2013, Defendants Pediatric Anesthesiologists, P.A. and Babu Rao Paidipalli, M.D. (“Defendants”) filed a Motion For Qualified Protective Order and Memorandum in Support. (ECF No. 59.) As stated in Defendants’ motion, they, through their counsel, seek to engage in *ex parte* communications with seven (7) of Brett Lovelace’s treating health care providers identified in the motion, in accordance with Tenn. Code Ann. Section 29-26-121(f).

Non-party Methodist Healthcare – Memphis Hospitals has filed a motion for protective order and supporting memorandum in support (ECF Nos. 66 and 66-1), wherein Methodist seeks a protective order prohibiting Defendants’ counsel from participating in *ex parte* communications with Elesia Turner, one of the seven (7) persons identified in Defendants’ motion for a qualified protective order. Apparently, Methodist does not oppose Defendants’ motion for a qualified protective order under Tenn. Code Ann. Section 29-26-121(f) permitting Defendants’ counsel from communicating *ex parte* with the other six (6) health care providers identified in Defendants’ motion. Methodist’s Motion For Protective Order was referred to the United States Magistrate Judge for determination. (ECF No. 68.)

### **LAW AND ARGUMENT**

Defendants do not oppose Methodist’s motion for protective order since Methodist’s motion pertains only to Elesia Turner, and since under Tenn. Code Ann. Section 29-26-121(f), Elesia Turner has an absolute right to refuse to communicate *ex parte* with Defendants’ counsel, if she so chooses. Methodist has asserted that whatever knowledge Elesia Turner may have in this matter is privileged under Tenn. Code Ann. Section 68-11-272. Although at this point Defendants do not know if Elesia Turner has knowledge of any facts which would not be privileged under Tenn. Code Ann. Section 68-11-272 and therefore Defendants cannot agree that there is no knowledge which Ms. Turner has which is not privileged, it is clear that Methodist and Ms. Turner, Clinical Risk Manager for Methodist Le Bonheur Children’s Hospital, do not consent to Defendants’ counsel’s communicating with Ms. Turner *ex parte*. Since Ms. Turner has an absolute right to refuse to communicate *ex parte* with Defendants’ counsel, Defendants have no reason, or basis, to oppose Methodist’s motion to prohibit Defendants’ counsel from communicating with Elesia Turner *ex parte*.

**CONCLUSION**

Based on the foregoing points and authorities, Defendants do not oppose Methodist's Motion For Protective Order seeking to prohibit Defendants' counsel from communicating with Elesia Turner *ex parte*.

Respectfully submitted,

THE HARDISON LAW FIRM, P.C.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served via the Court's electronic filing system upon:

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this 24th day of December, 2013.

s/David M. Cook  
DAVID M. COOK